

OFFICE OF THE DISTRICT ATTORNEY
CITY AND COUNTY OF PHILADELPHIA

BY: District Attorney Larry Krasner
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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION, CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA

vs.

MARQUISE NOEL

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CP-51-CR-0002562-2018

RULE TO SHOW CAUSE

AND NOW, to wit, this day of 2018, it is hereby ORDERED and
DECREED that the defendant show cause why the within Motion for a Continuance
in the above-captioned case should not be granted.

A hearing is fixed on the day of , 2018 in Courtroom 507
Criminal Justice Center, Philadelphia, Pennsylvania.

BY THE COURT:

J.

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ORDER

Upon consideration of the Commonwealth's Motion for a Continuance, it is by
the Court this day of , 2018, ORDERED and DECREED that the
said Motion is hereby GRANTED and case is continued to the day of
, 2019.

BY THE COURT:

J.

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COMMONWEALTH'S MOTION FOR A CONTINUANCE

Commonwealth of Pennsylvania submits the instant Motion to Continue¹ the scheduled Hearing on the Motion to Suppress in this matter for at least one hundred twenty (120) days and in support of said motion shows the Court the following:

Background

1. This case is currently listed for a hearing on Defendant's Motion to Suppress Evidence on December 21, 2018 at 9:00 am.
2. The District Attorney's Office ("DAO") was informed less than forty-eight hours before the scheduled hearing on the Motion to Suppress that sound evidence exists that shows two Commonwealth witnesses—the

¹ The Commonwealth incorporates by reference its contemporaneously-filed Motion to Disqualify Williams Davis, Esq. and his firm, McMonagle Perri McHugh Mischak Davis ("McMonagle Perri" or "the firm"), from representing the Defendant Marquise Noel ("Defendant") in this matter.

investigating homicide detectives here—having committed an unconstitutional search and lied about doing so in contravention of the law.

3. Counsel for the Defendant, Mr. Davis, indicated that because he does not want to end anyone's career, the DAO should consider making a plea offer to Defendant in *this* matter with the effect that the evidence of police misconduct would not become widely public.
4. McMonagle Perri has a contract with the Fraternal Order of Police to provide legal services to police officers who commit misconduct, Mr. Davis and his firm are in the position of representing two profoundly adverse witnesses to Defendant.
5. Mr. Davis is not capable of adhering to his duty of loyalty to Defendant under these circumstances. That, in and of itself, renders Mr. Davis himself subject to accusations of a violation of the Pennsylvania Rules of Professional Conduct; that possibility pits Mr. Davis's interests against those of his client here as well.

Good Cause Exists for Continuance and Continuance is Necessary to Protect the Interests of Justice

6. Mr. Davis has two actual conflicts of interest that prevent him from rendering effective assistance of counsel to Defendant, and the Court must appoint new, independent counsel to Defendant in light of those conflicts.
7. The aforementioned conflicts are unwaivable. However, should the Court be inclined to examine these circumstances in more detail, the Court must appoint an independent, non-conflicted counsel to Defendant for the purpose of advising him *about the conflict of interest issues* here as well as to ensure the Defendant has been provided with all *Brady* information relevant to this issue.
8. Given the seriousness of the issues presented in this motion as well as the motion to disqualify, Mr. Davis should be afforded an opportunity to adequately prepare and file any opposition to the Commonwealth's motion to disqualify.
9. A continuance will also enable the Court to appoint independent counsel to Detectives Mole and Murray to advise them as to their Fifth Amendment rights.
10. If Fifth Amendment counsel is appointed, the Detectives should have adequate time to consult with those independent counselors (the

Commonwealth requests that, should the Detectives wish instead to retain private counsel, the Court disqualify McMonagle Perri from representing either Detective as Fifth Amendment counsel in light of the adverse position that this would require any lawyer at Mr. Davis's firm to take up against Defendant in this matter).

11. Time is also needed to allow the Detectives adequate time to consult with their Fifth Amendment counsel and to allow them to evaluate their position with regard to each Detective's willingness or ability to testify at a hearing on the Motion to Suppress and, ultimately, at trial on this matter.
12. This continuance is also necessary to allow the DAO additional time to research and investigate how the circumstances described herein impacts the prosecution of this case and to consider whether it will be in the interests of justice to grant immunity to any witness in this matter.
13. There will be no prejudice to Defendant to issue such a continuance, and, in light of the averments contained in the motion to disqualify, such a continuance could benefit him.
14. The continuance will also benefit the Court's ability to ensure that any further proceedings in this matter are conducted in accordance with the dictates of the Rules of Professional Conduct as well as the law.
15. The Commonwealth anticipates that the continuance requested here will not result in pushing back the trial date in this case, currently scheduled for May of 2019.

Request for Relief

The Commonwealth therefore requests:

16. A continuance of the previously-calendared Motion to Suppress for one hundred twenty (120) days;
17. The appointment of independent counsels for both Detectives Mole and Murray to serve as Fifth Amendment counsels, or, in the alternative, a ruling that McMonagle Perri is disqualified from serving in that capacity for either Detective on the grounds that the lawyers of that firm have a conflict of interest;
18. The imposition of a sixty (60) day deadline from the date of the issuance of the Court's Order granting the above relief for Fifth Amendment counsel to Detectives Mole and Murray to advise the Commonwealth with specificity as to whether each Detective intends to assert his Fifth

Amendment rights, to allow sufficient time for the DAO to determine whether it will be in the interests of justice to grant immunity to any witness in this matter.

Respectfully submitted,



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COMMONWEALTH OF PENNSYLVANIA

MARQUISE NOEL

CERTIFICATION OF SERVICE

The Honorable Barbara A. McDermott
Rm. 1418 Stout Justice Center
1301 Filbert Street
Philadelphia, PA 19107

William Davis, Esquire
1845 Walnut Street, Fl 19
Philadelphia, PA 19103

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VERIFICATION

The undersigned hereby verifies that the facts set forth in the foregoing motion are true and correct to the best of my knowledge, information and belief. This verification is made subject to penalties for unsworn falsification to the authorities under 18 Pa. C.S. Section 4904.



LARRY KRASNER
District Attorney



PATRICIA CUMMINGS
Assistant District Attorney

Date: 12/20/18